HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.7396 OF 2007

Between:

B. Usanna

…Petitioner

AND

The Manager, MMS, Hyderabad and another

...Respondents

: O R D E R :

Counsel for the petitioner : Shri Ch. Ravinder

Counsel for the respondents : Shri Penjuri Venugopal

25th April, 2007

Per G.S.SINGHVI, CJ

This petition is directed against order dated 13-12-2006, vide which Central Administrative Tribunal, Hyderabad Bench (for short, 'the Tribunal') dismissed the original application filed by the petitioner for quashing the recovery of Rs.1,63,006.80p. from his pay.

A perusal of the record shows that while he was working as L.S.G Clerk in Mail Motor Service, Hyderabad, the petitioner was served with memorandum dated 30-11-2005 by Manager, Mail Motor Service, Hyderabad (respondent No.1) for holding an enquiry under Rule 16 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short, 'the Rules') in respect of the following charges:

> "Sri B. Usanna, L.S.G.Clerk worked as Store keeper from 01-12-2001 and he was relieved by Sri A.Mohan, T/S clerk with effect from 07-09-2004 vide this office letter No. MSE/MDW/2004-05 dated 07-09-2004. While handing over the stores stock to Sri A.Mohan it was found that 2156.5 quantity of store items physical storage noticed against the book balance and the value of shortage is Rs.246775/- which includes Other Charges items (Tyres, tubes, flaps, batteries etc.) as the details are furnished in the Annexure-'A'. The Store Keeper shall be responsible for proper arrangement of stores and make periodical check of all the stock in the stores as per Para 4 clearly shows this, which is Memo Distribution Work for the Store Keeper. Sri B. Usanna received a copy of the Memo Distribution Work for the storekeeper on 09.09.2002.
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> Sri B.Usanna was not allotted any work except reconciliation after Sept-2004 and also the office order was issued on 16-10-2004 that he should reconcile all the discrepancies of stock and complete the same before Oct-2004. This office memo No. MMS/MSA/Stores/2004-05 dated 20-12-2004 again directed Sri B. Usanna that more than three months time given to reconcile the stock and directed to submit in the prescribed form before 31-12-2004. Sri B. Usanna submitted three lists as per his letter dated 27-12-04 with details of items not deducted in stock as per issue for deduction in stock book. Then he was posted as Accounts clerk vide this office letter No. MSE/MDW/2004-05 dated

01.01.2005.

Sri B. Usanna was informed that the discrepancy of lists submitted including Other Charges list that has been reconciled as per lists submitted by Sri B. Usanna. The items reconciled as per the lists submitted by the official with the help of issue Register and stock books. The items reconciled quantity is 287.5, which can be deducted for the amount of 42233/-. After reconciliation the net shortage of items are 1869 No's for the amount of Rs.204542/-. The detailed list of reconciled and shortage items are furnished in the enclosed Annexure-'B'. The detailed list of reconciled and shortage items copy supplied to the official vide this office letter No. MSE/120/PF/2005-06 dated 10-10-05. Sri B. Usanna was directed to credit an amount of Rs.204542/- for shortage value after reconciliation, within 10 days after receipt of the letter No.MSE/120/PF/2005-06 dated 10-10-05.

Sri B.Usanna has failed to credit the amount of Rs.204542/- which is the Departmental loss of Spare parts and Other Charges items (Tyres, tubes, flaps, batteries etc.) when he worked as Storekeeper. Thus, he exhibited lack of devotion to duty and thereby violated the provision of Rule 3(1) (ii), failed to maintain absolute integrity in contravention of Rule 3 (1) (i) of CCS (Conduct) Rules, 1964."

The petitioner filed reply dated 5-12-2005. He not only denied the allegations, but also pleaded that regular departmental enquiry be held in accordance with the procedure prescribed under Rule 16. Respondent No.1 rejected the petitioner's request and asked him to submit reply on the points indicated in communication dated 14-12-2005 (Ex. P-7). After 13 days, respondent No.1 passed order dated 24/27-12-2005 for recovery of Rs.2,04,542/- from the pay and allowances of the petitioner. The petitioner challenged the order of recovery by filing departmental appeal. Simultaneously, he filed O.A No.62 of 2006 for stay of the recovery. By an order dated 27-2-2006, the Tribunal directed the Appellate Authority to decide the appeal within three months. Thereafter, the Director of Postal Services (Headquarters and Marketing) passed order dated 21-3-2007, whereby he partly allowed the petitioner's appeal and reduced the

amount of recovery from Rs.2,04,542/- to Rs.1,63,006.80p.

On receipt of the appellate order, the petitioner filed O.A No.473 of 2006 and prayed for quashing of the orders of recovery. He pleaded that the punitive order of recovery could not have been passed by respondent No.1 without holding enquiry in accordance with the Rules and the principles of natural justice.

The Tribunal adverted to the merits of the allegations levelled against the petitioner and disposed of the original application by directing the Appellate Authority to give personal hearing to the petitioner and permit him to cross check the Issue
Register with the Stock Register as well as the job cards to prove that he is not guilty.

We have heard Shri Ch. Ravinder, learned counsel for the petitioner and Shri Penjuri Venugopal, learned counsel for the respondents. In our opinion, the order passed by respondent No.1 is liable to be set aside on the ground of violation of Rule 16 of the Rules, which represent statutory embodiment of the rules of natural justice. It is settled law that an employee cannot be punished by assuming that the charge levelled against him is a proof unto itself. The primary burden to establish the accusation of misconduct of the charge is always on the employer except when the delinquent admits the charge. The delinquent employee cannot be called upon to defend himself unless the charge is established by adducing some tangible and cogent evidence. In this connection, we may usefully refer to the judgment of the Supreme Court in **Delhi Cloth and General Mills Co., v. Ludh Budh Singh**[1].

In the present case, we find that the order of recovery was passed by respondent No.1 without holding enquiry in accordance with the procedure prescribed under Rule 16 of the Rules. Not only this, he declined the specific request made by the petitioner for holding such enquiry. Therefore, there is no escape from the conclusion that the penalty imposed by respondent No.1 and the

order of recovery passed by him are vitiated due to violation of the rules of natural justice and the Tribunal gravely erred by indirectly declining to quash orders
dated 24/27-12-2005 and 9-8-2006.

In the result, the writ petition is allowed. Order
dated 13-12-2006 passed by the Tribunal as also order
dated 30-11-2005 passed by respondent No.1 are quashed. However, it is made clear that the competent authority shall be free to hold enquiry against the petitioner from the stage of charge sheet and pass appropriate order in accordance with law.

As a sequel to disposal of the writ petition, WPMP No. 9455 of 2007 filed by the petitioner for interim relief is disposed of as infructuous.

G.S. SINGHVI, C.J.

C.V. NAGARJUNA REDDY, J.

25th April, 2007
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[1] AIR 1972 SC 1031